

(2) By mailing a copy of the complaint by "Express Mail" or first-class mail to:

(i) A registered practitioner at the address for which separate notice was last received by the Director or

(ii) A non-registered practitioner at the last address for the respondent known to the Director.

(3) By any method mutually agreeable to the Director and the respondent.

(b) If a complaint served by mail under paragraph (a)(2) of this section is returned by the U.S. Postal Service, the Director shall mail a second copy of the complaint to the respondent. If the second copy of the complaint is also returned by the U.S. Postal Service, the Director shall serve the respondent by publishing an appropriate notice in the *Official Gazette* for four consecutive weeks, in which case the time for answer shall be at least thirty days from the fourth publication of the notice.

(c) If a respondent is a registered practitioner, the Director may serve simultaneously with the complaint a letter under §10.11(b). The Director may require the respondent to answer the §10.11(b) letter within a period of not less than 15 days. An answer to the §10.11(b) letter shall constitute proof of service. If the respondent fails to answer the §10.11(b) letter, his or her name will be removed from the register as provided by §10.11(b).

(d) If the respondent is represented by an attorney under §10.140(a), a copy of the complaint shall also be served on the attorney.

§ 10.136 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within a time set in the complaint which shall be not less than thirty days.

(b) *With whom filed.* The answer shall be filed in writing with the administrative law judge. The time for filing an answer may be extended once for a period of no more than thirty days by the administrative law judge upon a showing of good cause provided a motion requesting an extension of time is filed within thirty days after the date the complaint is filed by the Director. A

copy of the answer shall be served on the Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint which the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation when in fact the respondent possesses that information. The respondent shall also state affirmatively special matters of defense.

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint which is not denied by a respondent in the answer is deemed to be admitted and may be considered proven. No further evidence in respect of that allegation need be received by the administrative law judge at any hearing. Failure to timely file an answer will constitute an admission of the allegations in the complaint.

(e) *Reply by Director.* No reply to an answer is required by the Director and any affirmative defense in the answer shall be deemed to be denied. The Director may, however, file a reply if he or she chooses or if ordered by the administrative law judge.

[50 FR 5172, Feb. 6, 1985; 50 FR 25073, June 17, 1985]

§ 10.137 Supplemental complaint.

False statements in an answer may be made the basis of a supplemental complaint.

§ 10.138 Contested case.

Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the administrative law judge.